IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 443 OF 2007

Prabhakar V. Mukadam.... Petitioner

versus

Laxman S. patil..... Respondent.

Ms. Gauri Godse for thepetitioner
Mr. Shekhar i/b M/s. J. Shekhar & Co. for respondent 17.

CORAM; A.P. DESHPANDE, J.
DATED; 5TH APRIL, 2007

P.C.;

1. At the request of the learned counsel for the petitioner, permission is granted to delete respondent no.15 as he is reported to be dead by the respondent no.16.

2. The petitioners are challenged an order passed by the Dvl. Commissioner dated 9-10-2006 whereby the revision application filed by the petitioners under section 76 of the Bombay Tenancy and Agricultural Land Act is dismissed for non-prosecution. The learned counsel for the petitioner has contended that this court by an order dated 22-3-2005 passed in Writ Petition No.670/05, has directed to hear and decide

the revision after affording an opportunity of hearing to the parties concerned within the stipulated period.

3. The grievance of the petitioner is that without serving any notice on the petitioners intimating the date fixed for hearing, the matter was taken up when the respondent appeared before the Commissioner and behind the back of the petitioners, the impugned order came to be passed. It is also submitted by the learned counsel for the petitioner that usually matters are not being heard by the Commissioner on account of pendency of Special Leave Petition in the Supreme Court and the present revision has been dismissed without any intimation or notice to the petitioners.

4. Perusal of the impugned order reveals that Commissioner has noticed from the rozanama that the revision was fixed for hearing on 31-8-2006 and thereafter on 21-9-2006 on which dates the applicant/petitioners were absent. The petitioner's absence is also noted on 5-12-2006 on account of which impugned order was passed on 9-12-2006. As the petitioner is making out a case for restoration of the revision, the petitioners should have moved appropriate application before the Commissioner explaining the reason for absence, such as non-receipt

of notice in regard to the date of hearing, and substantiated the said plea. Without moving the Dvl. Commissioner and without exhausting the remedy available to the petitioner, this writ petition has been filed. I am not inclined to entertain the writ petition at this stage. However, liberty is granted to the petitioner to move an appropriate application for restoration of the revision application before the Dvl. Commissioer.

5. At this stage the learned counsel for the petitioner submits that according to the order passed by the Dvl. Commissioner dated 9-10-2006 the sub Dvl. Officer has been directed to hear and decide the appeal bearing No.4/04 pending before him and the SDO has fixed the matter on 9-4-2007. A limited prayer is made for staying the proceeding on the file of SDO for a period of 15 days from today. Affidavit of service on the respondents was permitted by an order passed by the learned Single Judge (Coram: D.B.Bhosale, J.) dated 2-3-2007, which has been filed to substantiate that the notice of writ petition is served on all the respondents, baring respondent no.17, and the learned counsel has put in appearance for respondent no.17.

6. In the result, the writ petition is summarily dismissed. However the sub Dvl. Officer is directed

not to proceed with the appeal No.4/04 for a period of 15 days from the passing of this order so as to enable the present petitioners to make appropriate application for restoration of the revision application before the Dvl. Commissioner and to seek appropriate orders in the same.

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